

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USDC Docket Number : 05-cv-10994

Nancy Brooks, et al

v.

AIG SunAmerica Life Assurance Company

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**CLERK'S CERTIFICATE**

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered: 1-54, 56

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 3/23/2006.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on April 24, 2006.

Sarah A Thornton, Clerk of Court

By:

Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 4-26-06.

Anda Barry  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:05-cv-10994-WGY**

Brooks et al v. AIG SunAmerica Life Assurance Company  
Assigned to: Judge William G. Young  
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 05/13/2005  
Jury Demand: Plaintiff  
Nature of Suit: 110 Insurance  
Jurisdiction: Diversity

**Plaintiff**

**Nancy Brooks**  
*Trustee of the Irrevocable Trust of  
Donald L. Silverman and as Executrice  
for the Estate of Donald L. Silverman*

represented by **John P. Zavez**  
Adkins, Kelston and Zavez, P.C.  
90 Canal Street  
5th Floor  
Boston, MA 02114  
617-367-1040  
Fax: 617-742-8280  
Email: jzavez@akzlaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Joan Silverman**  
*Trustee of the Irrevocable Trust of  
Donald L. Silverman and as Executrice  
for the Estate of Donald L. Silverman*

represented by **John P. Zavez**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**AIG SunAmerica Life Assurance  
Company**

represented by **James R. Carroll**  
Skadden, Arps, Slate, Meagher & Flom  
One Beacon Street  
31st Floor  
Boston, MA 02108  
617-573-4800  
Fax: 617-573-4822  
Email: jcarroll@skadden.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
05/13/2005	1	CLASS ACTION COMPLAINT against AIG SunAmerica Life Assurance Company Filing fee: \$ 250, receipt number 64284, filed by

		Nancy Brooks, Joan Silverman. (Attachments: # <u>1</u> Civil Cover Sheet) (Bell, Marie) (Entered: 05/17/2005)
05/13/2005	●	Summons Issued as to AIG SunAmerica Life Assurance Company. (Bell, Marie) (Entered: 05/17/2005)
05/13/2005	●	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Sorokin. (Bell, Marie) (Entered: 05/17/2005)
05/17/2005	●	Letter sent to Attorney John P. Zavez advising of inactive status in the Bar of this Court. Notice, reregistration and ECF application included. (Bell, Marie) (Entered: 05/17/2005)
05/31/2005	● <u>2</u>	AFFIDAVIT OF SERVICE Executed by Nancy Brooks, Joan Silverman. AIG SunAmerica Life Assurance Company served on 5/23/2005, answer due 6/13/2005. Acknowledgement filed by Nancy Brooks; Joan Silverman. (Bell, Marie) (Entered: 06/01/2005)
06/22/2005	● <u>3</u>	NOTICE of Appearance by James R. Carroll on behalf of AIG SunAmerica Life Assurance Company (Carroll, James) (Entered: 06/22/2005)
06/22/2005	● <u>4</u>	CORPORATE DISCLOSURE STATEMENT by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 06/22/2005)
06/22/2005	● <u>5</u>	STIPULATION <i>And Order</i> by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 06/22/2005)
06/23/2005	●	Judge William G. Young : Electronic ORDER entered Granting re <u>5</u> Stipulation filed by AIG SunAmerica Life Assurance Company. Response due 7/25/05 for AIG SunAmerica Life Assurance Company. cc/cl.(Bell, Marie) (Entered: 06/23/2005)
06/23/2005	●	Reset Answer Deadline for AIG SunAmerica Life Assurance Company to 7/25/05. (Bell, Marie) (Entered: 06/23/2005)
07/25/2005	● <u>6</u>	MOTION to Dismiss by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 07/25/2005)
07/25/2005	● <u>7</u>	MEMORANDUM in Support re <u>6</u> MOTION to Dismiss filed by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Carroll, James) (Entered: 07/25/2005)
08/08/2005	● <u>8</u>	Opposition re <u>6</u> MOTION to Dismiss filed by Nancy Brooks, Joan Silverman. c/s. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 6)(Bell, Marie) (Entered: 08/09/2005)
08/25/2005	●	NOTICE of Hearing on Motion <u>6</u> MOTION to Dismiss: Motion Hearing set for 10/5/2005 02:00 PM before Chief Judge William G. Young. The hearing will take place at SUFFOLK UNIVERSITY LAW SCHOOL, 120 TREMONT ST., 4TH FLOOR, BOSTON. cc/cl(Smith, Bonnie) (Entered: 08/25/2005)



08/25/2005	9	Assented to MOTION for Leave to File <i>Reply Memorandum Of law In Further Support Of Defendant AIG SunAmerica's Motion To Dismiss</i> by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Proposed Reply Brief# <u>2</u> Exhibit 1 to Proposed Reply Brief)(Carroll, James) (Entered: 08/25/2005)
08/26/2005		Judge William G. Young : Electronic ORDER entered granting <u>9</u> Motion for Leave to File Reply Memorandum in Support of Motion to Dismiss. cc/cl. (Bell, Marie) (Entered: 08/26/2005)
08/26/2005	10	REPLY to Response to Motion re <u>6</u> MOTION to Dismiss filed by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit 1) (Carroll, James) (Entered: 08/26/2005)
10/05/2005		ElectronicClerk's Notes for proceedings held before Judge William G. Young : Motion Hearing held on 10/5/2005 re <u>6</u> MOTION to Dismiss filed by AIG SunAmerica Life Assurance Company,After Hearing the <u>6</u> MOTION to Dismiss filed by AIG SunAmerica Life Assurance Company IS ALLOWED IN PART; DENIED IN PART. Plaintiffs are within 10 days to file a supplemental pleading as outlined by the Court. 16.1 Conference set for 11/14/2005 02:00 PM in Courtroom 18 before Chief Judge William G. Young. (Court Reporter Donald Womack.) (Bell, Marie) (Entered: 10/06/2005)
10/14/2005	11	NOTICE of Scheduling Conference Scheduling Conference set for 11/14/2005 02:00 PM in Courtroom 18 before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 10/14/2005)
10/14/2005	12	Supplemental Opposition re <u>6</u> MOTION to Dismiss filed by Nancy Brooks, Joan Silverman. (Zavez, John) (Entered: 10/14/2005)
10/20/2005	13	STIPULATION <i>And Order</i> by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 10/20/2005)
10/21/2005		Judge William G. Young : ORDER entered. STIPULATION AND ORDER resetting answer deadline to 10/26/05(Smith, Bonnie) (Entered: 10/21/2005)
10/21/2005		Set/Reset Answer Deadlines for AIG SunAmerica Life Assurance Company. (Smith, Bonnie) (Entered: 10/21/2005)
10/25/2005	14	ANSWER to Complaint <i>And Affirmative Defenses</i> by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit A)(Carroll, James) (Entered: 10/25/2005)
10/25/2005	15	MOTION for Judgment on the Pleadings by AIG SunAmerica Life Assurance Company.(Carroll, James) (Entered: 10/25/2005)
10/25/2005	16	MEMORANDUM in Support re <u>15</u> MOTION for Judgment on the Pleadings filed by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit A)(Carroll, James) (Entered: 10/25/2005)
10/28/2005		NOTICE of Hearing on Motion <u>15</u> MOTION for Judgment on the Pleadings: Motion Hearing set for 12/14/2005 02:00 PM in Courtroom 18

		before Chief Judge William G. Young. Opposition is due by Nov. 9, 2005. Reply brief, if any is due by Nov. 21, 2005. cc/cl(Smith, Bonnie) (Entered: 10/28/2005)
11/04/2005	17	JOINT STATEMENT re scheduling conference. (Carroll, James) (Entered: 11/04/2005)
11/07/2005	18	CERTIFICATE OF CONSULTATION Pursuant To Local Rule 16.1(D) (3) by James R. Carroll on behalf of AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 11/07/2005)
11/07/2005	19	Supplemental JOINT STATEMENT re scheduling conference Plaintiffs' LR 16.1(D)(3) Cert.. (Zavez, John) (Entered: 11/07/2005)
11/09/2005	20	Cross MOTION for Judgment on the Pleadings (Liability) by Nancy Brooks.(Zavez, John) (Entered: 11/09/2005)
11/09/2005	21	MEMORANDUM in Opposition re 15 MOTION for Judgment on the Pleadings filed by Nancy Brooks. (Zavez, John) (Entered: 11/09/2005)
11/09/2005	22	MEMORANDUM in Support re 20 Cross MOTION for Judgment on the Pleadings (Liability) filed by Nancy Brooks. (Zavez, John) (Entered: 11/09/2005)
11/09/2005	23	MOTION to Amend Complaint by Nancy Brooks.(Zavez, John) (Entered: 11/09/2005)
11/09/2005	24	AMENDED COMPLAINT (Proposed First) against AIG SunAmerica Life Assurance Company, filed by Nancy Brooks.(Zavez, John) (Entered: 11/09/2005)
11/10/2005		NOTICE of Hearing on Motion 20 Cross MOTION for Judgment on the Pleadings (Liability): Motion Hearing set for 12/14/2005 02:00 PM before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 11/10/2005)
11/14/2005		ElectronicClerk's Notes for proceedings held before Judge William G. Young : Scheduling Conference held on 11/14/2005. The Court explains requirements of the session and inquires as to whether the parties consent to proceed before a magistrate judge. Case to go to ADR as of Aug., 2006 Final Pretrial Conference set for NO SOONER THAN 11/6/2006 02:00 PM before Chief Judge William G. Young. Jury Trial set for RUNNING TRIAL LIST AS OF 12/4/2006 09:00 AM before Chief Judge William G. Young. (Smith, Bonnie) (Entered: 11/15/2005)
11/16/2005		Judge William G. Young : Electronic ORDER entered. re 17 JOINT STATEMENT re scheduling conference. RETURN. THIS IS TOO LONG A TIME-LINE. cc/cl.(Bell, Marie) (Entered: 11/16/2005)
11/21/2005	25	REPLY to Response to Motion re 15 MOTION for Judgment on the Pleadings filed by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 11/21/2005)
11/22/2005	26	Amended JOINT STATEMENT of counsel Pursuant to Local Rule 16.1.





		(Carroll, James) (Entered: 11/22/2005)
11/23/2005	<a href="#"><u>27</u></a>	MEMORANDUM in Opposition re <u>20</u> Cross MOTION for Judgment on the Pleadings ( <i>Liability</i> ) filed by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 11/23/2005)
11/23/2005	<a href="#"><u>28</u></a>	MEMORANDUM in Opposition re <u>23</u> MOTION to Amend <i>Complaint</i> filed by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 11/23/2005)
11/29/2005	<a href="#"><u>29</u></a>	Judge William G. Young : ORDER entered. re <u>20</u> Cross MOTION for Judgment on the Pleadings ( <i>Liability</i> ) filed by Nancy Brooks. cc/cl. (Bell, Marie) (Entered: 11/29/2005)
11/29/2005	<a href="#"><u>30</u></a>	Judge William G. Young : Electronic ORDER entered. re <u>19</u> Supplemental JOINT STATEMENT re scheduling conference. SO ORDERED AS THE CASE MANAGEMENT SCHEDULING ORDER. Discovery to be completed by 8/3/2006. Dispositive Motions due by 10/6/2006. cc/cl.(Bell, Marie) (Entered: 11/29/2005)
11/29/2005	<a href="#"><u>31</u></a>	Judge William G. Young : Electronic ORDER entered re <u>26</u> Joint statement of counsel. SO ORDERED AS THE CASE MANAGEMENT SCHEDULING ORDER. Discovery to be completed by 9/15/2006. Dispositive Motions due by 10/6/2006. cc/cl.(Bell, Marie) (Entered: 11/30/2005)
12/09/2005	<a href="#"><u>32</u></a>	MOTION for Reconsideration of <i>29 Nov 05 Order</i> by Nancy Brooks. (Zavez, John) (Entered: 12/09/2005)
12/12/2005	<a href="#"><u>33</u></a>	AFFIDAVIT of Gavin D. Friedman re <u>29</u> Order by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 12/12/2005)
12/13/2005	<a href="#"><u>34</u></a>	Opposition re <u>30</u> MOTION for Reconsideration of <i>29 Nov 05 Order</i> filed by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 12/13/2005)
12/13/2005	<a href="#"><u>35</u></a>	Judge William G. Young : Electronic ORDER entered denying <u>30</u> Motion for Reconsideration (Smith, Bonnie) (Entered: 12/13/2005)
12/14/2005	<a href="#"><u>36</u></a>	MOTION to Certify Class by Nancy Brooks.(Zavez, John) (Entered: 12/14/2005)
12/14/2005	<a href="#"><u>37</u></a>	MEMORANDUM in Support re <u>33</u> MOTION to Certify Class filed by Nancy Brooks. (Zavez, John) (Entered: 12/14/2005)
12/14/2005	<a href="#"><u>38</u></a>	AFFIDAVIT in Support re <u>33</u> MOTION to Certify Class filed by Nancy Brooks. (Zavez, John) (Entered: 12/14/2005)
12/14/2005	<a href="#"><u>39</u></a>	ElectronicClerk's Notes for proceedings held before Judge William G. Young : Motion Hearing held on 12/14/2005 re <u>20</u> Cross MOTION for Judgment on the Pleadings ( <i>Liability</i> ) filed by Nancy Brooks., <u>15</u> MOTION for Judgment on the Pleadings filed by AIG SunAmerica Life Assurance Company, AFTER HEARING:, the Motion for Judgment on the pleadings filed by the Plaintiff is allowed in part, denied in part. The

		Cross Motion for Summary Judgment is Denied. The plaintiff has 30 days to file an affidavit of the Commissioner of Insurance or an authoritative person from that office., Motions terminated: <u>15</u> MOTION for Judgment on the Pleadings filed by AIG SunAmerica Life Assurance Company., <u>20</u> Cross MOTION for Judgment on the Pleadings ( <i>Liability</i> ) filed by Nancy Brooks., (Court Reporter Womack.) (Smith, Bonnie) (Entered: 12/15/2005)
12/30/2005	<u>36</u>	BRIEF by AIG SunAmerica Life Assurance Company to <u>29</u> Order. (Carroll, James) (Entered: 12/30/2005)
12/30/2005	<u>37</u>	AFFIDAVIT of Gavin D. Friedman re <u>29</u> Order by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit A)(Carroll, James) (Entered: 12/30/2005)
12/30/2005	<u>38</u>	AFFIDAVIT of Gary Strunk re <u>29</u> Order by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Exhibit A)(Carroll, James) (Entered: 12/30/2005)
01/05/2006	<u>39</u>	TRANSCRIPT of Proceedings held on 12/14/05 before Judge Young. Court Reporter: Womack. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at womack@megatran.com or the Clerk's Office. (Smith, Bonnie) (Entered: 01/05/2006)
01/12/2006	<u>40</u>	RESPONSE to Motion re <u>15</u> MOTION for Judgment on the Pleadings filed by Nancy Brooks. (Zavez, John) (Entered: 01/12/2006)
01/26/2006	<u>41</u>	MOTION for Summary Judgment by AIG SunAmerica Life Assurance Company.(Carroll, James) (Entered: 01/26/2006)
01/26/2006	<u>42</u>	MEMORANDUM in Support re <u>41</u> MOTION for Summary Judgment filed by AIG SunAmerica Life Assurance Company. (Carroll, James) (Entered: 01/26/2006)
01/26/2006	<u>43</u>	STATEMENT of facts re <u>41</u> MOTION for Summary Judgment <i>Pursuant To Local Rule 56.1</i> . (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C)(Carroll, James) (Entered: 01/26/2006)
02/01/2006	<u>44</u>	Joint MOTION for Protective Order by AIG SunAmerica Life Assurance Company. (Attachments: # <u>1</u> Text of Proposed Order Exhibit A)(Carroll, James) (Entered: 02/01/2006)
02/02/2006	<u>45</u>	NOTICE of Hearing on Motion <u>41</u> MOTION for Summary Judgment: Motion Hearing set for 3/2/2006 02:00 PM before Judge William G. Young. Opposition is due by 2/9/06. Reply brief, if any, is due by 2/17/06 cc/cl(Smith, Bonnie) (Entered: 02/02/2006)
02/02/2006	<u>45</u>	Judge William G. Young : ORDER entered. STIPULATION AND ORDER for the Protection and Exchange of Confidential Information. (Paine, Matthew) (Entered: 02/02/2006)
02/09/2006	<u>46</u>	MEMORANDUM in Opposition re <u>41</u> MOTION for Summary Judgment <i>and in Support of Cross-Motion for Partial Summary Judgment for</i>



		Plaintiffs filed by Nancy Brooks. (Zavez, John) (Entered: 02/09/2006)
02/09/2006	47	Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ) by Nancy Brooks.(Zavez, John) (Entered: 02/09/2006)
02/09/2006	48	ADDENDUM re 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ), 41 MOTION for Summary Judgment ( <i>LR 56.1 Statement of Facts</i> ) filed by Nancy Brooks. (Attachments: # 1 # 2 # 3 # 4 # 5 # 6) (Zavez, John) (Entered: 02/09/2006)
02/10/2006		NOTICE of Hearing on Motion 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ): Motion Hearing set for 3/2/2006 02:00 PM before Judge William G. Young. Opposition is due by 2/23/06(Smith, Bonnie) (Entered: 02/10/2006)
02/14/2006		ELECTRONIC NOTICE Reply brief, if any, is due by Feb.28, 2006 re 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ) cc/cl (Smith, Bonnie) (Entered: 02/14/2006)
02/17/2006	49	REPLY to Response to Motion re 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ), 41 MOTION for Summary Judgment filed by AIG SunAmerica Life Assurance Company. (Attachments: # 1 Exhibit A)(Carroll, James) (Entered: 02/17/2006)
02/17/2006	50	STATEMENT of facts re 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ). (Carroll, James) (Entered: 02/17/2006)
02/28/2006	51	REPLY to Response to Motion re 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ) filed by Nancy Brooks. (Zavez, John) (Entered: 02/28/2006)
02/28/2006	52	AFFIDAVIT of John Peter Zavez in Opposition re 41 MOTION for Summary Judgment ( <i>Rule 56(f)</i> ) filed by Nancy Brooks. (Zavez, John) (Entered: 02/28/2006)
03/02/2006		ElectronicClerk's Notes for proceedings held before Judge William G. Young : Motion Hearing held on 3/2/2006 re 41 MOTION for Summary Judgment filed by AIG SunAmerica Life Assurance Company,, 47 Cross MOTION for Partial Summary Judgment ( <i>Liability</i> ) filed by Nancy Brooks,, 33 MOTION to Certify Class filed by Nancy Brooks,. After hearing the Court ALLOWS the Defendant's Motion and DENIES the Plaintiffs' Motions. judgment to enter for AIG. (Court Reporter Gibbons.) (Smith, Bonnie) (Entered: 03/03/2006)
03/03/2006	53	Judge William G. Young : ORDER entered. JUDGMENT in favor of Defendant against Plaintiffs(Smith, Bonnie) (Entered: 03/03/2006)
03/13/2006	54	MOTION for Reconsideration by Nancy Brooks. (Attachments: # 1 Exhibit A)(Zavez, John) (Entered: 03/13/2006)
03/15/2006		Judge William G. Young : Electronic ORDER entered DENYING 54 Motion for Reconsideration. (Paine, Matthew) (Entered: 03/15/2006)
03/22/2006	55	TRANSCRIPT of Motion for Summary Judgment Hearing held on



		March 2, 2006 before Judge Young. Court Reporter: James P. Gibbons. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at 617/428-0402 or the Clerk's Office. (Scafani, Deborah) (Entered: 03/22/2006)
03/23/2006	 56	NOTICE OF APPEAL by Nancy Brooks. \$ 255 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerk/transcript.htm">http://www.ca1.uscourts.gov/clerk/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 4/12/2006. (Attachments: # 1)(Zavez, John) (Entered: 03/23/2006)
04/04/2006		Filing fee: \$ 255.00, receipt number 71529 for 56 Notice of Appeal. (Paine, Matthew) (Entered: 04/05/2006)